

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST HOME DESIGNING, INC. a
Washington corporation,

Plaintiff,

v.

LEXAR HOMES, LLC, a Washington Limited
Liability Company, HILINE HOMES, INC a
Washington Corporation; ROBERT HOLLIS,
an individual, JAMES MOEN, an individual,
and WILLIAM SUNBY, an individual,

Defendants.

No.

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

For its Complaint For Damages and Injunctive Relief, Northwest Home Designing, Inc.
("NHD"), alleges:

I. PARTIES AND JURISDICTION

1. Plaintiff Northwest Home Designing, Inc. ("NHD") is a Washington Corporation
with its principal place of business in University Place, Washington.

2. Defendant Lexar Homes, LLC. ("LEXAR") is a Washington limited liability
company. It has offices throughout Washington, including in King County.

3. Upon information and belief, Defendant James Moen is the owner and governor
of LEXAR. Upon information and belief, Moen resides in this judicial district.

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF - 1
Case No.

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-3292
PHONE (206) 447-4400 FAX (206) 447-9700

1 4. Upon information and belief, Defendant Robert Hollis is the owner and governor
2 of LEXAR. Upon information and belief, Hollis resides in this judicial district.

3 5. This is an action for copyright infringement. The Court has subject matter
4 jurisdiction under 28 U.S.C. § 1338 and 17 U.S.C. §§ 501 *et seq.*

5 6. Upon information and belief, LEXAR is engaged in the homebuilding business
6 and has constructed homes in this judicial district, including homes that infringe NHD's
7 copyrights as hereinafter described.

8 7. LEXAR HOMES, LLC, Robert Hollis and James Moen are regularly engaged in
9 business and reside in this judicial district. The Court has personal jurisdiction over the
10 defendants. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

11 **II. FACTS**

12 8. NHD is a residential design company engaged in the business of designing and
13 selling home designs.

14 9. In or about 2004, NHD created an original home design identified as the SK-2503
15 design. A copy of the SK-2503 design is attached hereto as Exhibit A.

16 10. NHD obtained Copyright Registration No. VA 1-792-781 for the SK-2503 design,
17 which is valid and subsisting. A copy of the registration certificate is attached hereto as
18 Exhibit B.

19 11. In or about 2007, NHD created a modification of the SK-2503 home design
20 identified as the SK-2503-D. A copy of the SK-2503-D is attached hereto as Exhibit C.

21 12. NHD obtained Copyright Registration No. VA 1-792-785 for the SK-2503-D
22 design, which is valid and subsisting. A copy of the registration certificate is attached hereto as
23 Exhibit D.

24 13. In 2009 and 2010, Defendants James Moen and Robert Hollis were
25 owners/members of a building company, HiLine Homes, Inc. ("HiLine Homes").
26

1 14. HiLine purchased a single use license for the SK-2503 design. The single use
2 license gave HiLine the right to construct a one single family home based on the SK-2503
3 design.

4 15. Plaintiff provided architectural documents to HiLine Homes, pursuant to the
5 parties' licensing agreement. Those documents included documents regarding the SK-2503.
6 The invoice for those documents included the following statement:

7 The architectural documents that you are in receipt of are owned
8 by Northwest Home Designing, Inc., and protected under the
9 Federal Copyright Laws. The purchase of a single, multiple set
10 package, sepia or plans conveys the right to build only one
11 structure. The purchase of additional sets of plans does not give
12 you the right to construct more than one structure. Reproduction,
modifications or derivative works of the plans, without consent of
the copyright owner, is expressly prohibited. All Material is
subject to Northwest Home Designing, Inc. License Agreement.
Furthermore, you are in receipt of House Plans Marketing Assoc.
Copyright Brochure.

13 16. In or about 2011, Moen and Hollis formed LEXAR. Moen and Hollis were and
14 are the owners of LEXAR. Upon information and belief, Moen and Hollis are managing
15 members, officers, and/or directors of LEXAR, and control LEXAR.

16 17. In or about 2015, LEXAR published and offered for sale, via its website, the floor
17 design LEXAR 2272 (Standard Orientation and Reverse Orientation), attached hereto as
18 Exhibit E.

19 18. Upon information and belief, Defendants copied Plaintiff's SK-2503 design and
20 made minor changes to that design to create the LEXAR 2272 design. Thus, the LEXAR 2272 is
21 a derivative of the SK-2503 and SK-2503-D designs.

22 19. The LEXAR 2272 design is substantially similar to the SK-2503 and SK-2503-D
23 designs as demonstrated by comparing the designs attached hereto. The substantial similarities
24 include, but are not limited to the building form, arrangement of spaces and placement of rooms,
25 dimensions, traffic flow, exterior elevations, fenestration patterns, and relationship of plan
26 features.

1 20. LEXAR copied the NHD SK-2503 and SK-2503-D designs without the
2 permission or consent of NHD, and used the unauthorized LEXAR 2272 designs to construct one
3 or more homes.

4 21. LEXAR operates “branches” in several states that do business as “Lexar
5 Homes.” Upon information and belief, these “branches” are independently owned franchisees or
6 licensees of LEXAR. Upon information and belief, LEXAR branches are located in
7 Bellingham, WA; Burlington, WA; Centralia, WA; North King County branch in Arlington,
8 WA; South King County branch in Tacoma, WA; Lewiston, ID; Olympic Peninsula branch
9 located in Townsend, WA; Portland, OR; San Juan Islands branch in Burlington, WA;
10 Silverdale, WA; Snohomish branch in Arlington, WA; Spokane, WA; Tacoma, WA; Treasure
11 Valley branch in Meridian, ID; Tri-Cities branch in Kennewick, WA; Twin Falls, ID;
12 Wenatchee, WA; Woodland, WA; Yakima, WA; and Bismark, ND.

13 22. LEXAR’s branches share LEXAR’s website, www.lexarhomes.com. The website
14 provides information to potential customers of LEXAR and LEXAR branches. Among this
15 information is information regarding designs for homes that LEXAR and/or its LEXAR branches
16 could build for customers.

17 23. Upon information and belief, the LEXAR branches are agents of LEXAR and
18 LEXAR is liable for their actions and for damages arising from the branches’ infringement of
19 Plaintiff’s copyrights.

20 24. Until recently, LEXAR’s website published copies of the LEXAR 2272 design.
21 After NHD confronted LEXAR about NHD’s belief that LEXAR copied the SD-2503, LEXAR
22 quietly removed the LEXAR 2272 information from its website.

23 25. Upon information and belief, LEXAR provided copies of the LEXAR 2272
24 design to its LEXAR branches. Upon information and belief, the LEXAR branches made further
25 copies of the LEXAR 2272 designs, and built unauthorized homes from the LEXAR 2272
26 designs.

**FIRST CLAIM
COPYRIGHT INFRINGEMENT 17 U.S.C. §§ 501, et seq.**

26. NHD realleges the preceding paragraphs.

27. Upon information and belief, Defendants have infringed NHD's copyrights in one or more of NHD's designs, including the SK-2503 and SK-2503-D design by redrawing, reproducing, and/or modifying such designs and using the redrawn, reproduced, and/or modified designs to construct one or more homes.

28. Defendants did not obtain the permission or consent of NHD to redraw, reproduce modify, or distribute, NHD's home design(s), or to build homes based on NHD's copyrighted design(s).

29. Defendants' copying and use of NHD's home design(s) without NHD's permission or consent constitutes infringement of NHD's copyright.

30. Defendants further provided copies of the infringing LEXAR 2272 to Defendants' franchisees and encouraged Defendants' franchisees to build homes from those designs. Upon information and belief, Defendants' franchisees did build at least one home from the LEXAR 2272 designs.

31. Defendants have directly and contributorily infringed NHD's copyrights.

32. Upon information and belief, Defendants' infringement was willful.

33. Based upon this infringement, NHD has suffered damages in an amount to be proven at trial.

34. Damages are not an adequate remedy, however, and NHD is entitled to injunctive relief to prevent the Defendants from further infringing NHD's copyrights.

35. Upon information and belief, Defendants Hollis and Moen directed and/or participated in the acts of copyright infringement committed by LEXAR and acted with knowledge that their actions constituted copyright infringement.

III. PRAYER FOR RELIEF

NHD respectfully prays that:

A. Defendants, their employees, representatives, and agents be permanently enjoined from publishing, marketing, selling, or using NHD's copyrighted works or any works substantially similar thereto;

B. An accounting be had of Defendants' profits attributable to the infringement, to include, without limitation, from the sale of infringing homes, and that Defendant's be required to disgorge such profits;

C. Defendant's infringement be found to be willful;

D. The Court award NHD actual damages suffered as a result of the infringement;

E. In the alternative, the Court award NHD its statutory damages;

F. The Court award any and all relief to which NHD may be entitled pursuant to the Copyright Act, 17 U.S.C. § 501 *et seq.*;

G. For judgment against Defendants for all costs and attorney fees as authorized by applicable law;

H. For leave to freely amend the pleadings; and

I. The Court grant NHD such other and further relief as the Court may deem just and proper.

IV. DEMAND FOR JURY TRIAL

NHD hereby demands a trial by jury on all issues so triable.

1 DATED this 1st day of March, 2017.

2
3 s/Adam Coady

4 Adam Coady, WSBA #44165

5 FOSTER PEPPER PLLC

6 1111 Third Avenue

7 Suite 3000

8 Seattle, Washington 98101-3292

9 Telephone: (206) 447-4400

10 Facsimile: (206) 447-9700

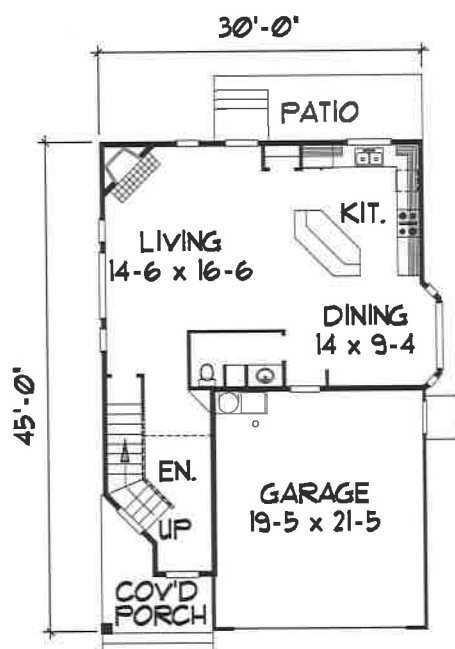
11 Email: adam.coady@foster.com

12 Attorneys for Plaintiff Northwest Home Designing, Inc.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF - 7
Case No.

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-3292
PHONE (206) 447-4400 FAX (206) 447-9700

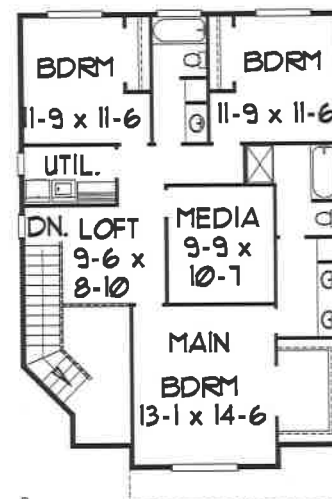
EXHIBIT A



MAIN FLOOR - 856 Sq. Ft.

TOTAL - 1,931 Sq. Ft.
GARAGE - 440 Sq. Ft.

© 2005 NORTHWEST HOME DESIGNING, INC.



UPPER FLOOR - 1,075 Sq. Ft.

NORTHWEST HOME DESIGNING, INC.

4928 109TH STREET SW LAKEWOOD, WA 98499 (253) 584-6309 FAX: (253) 588-0607
www.NHDHomePlans.com

CHECKED

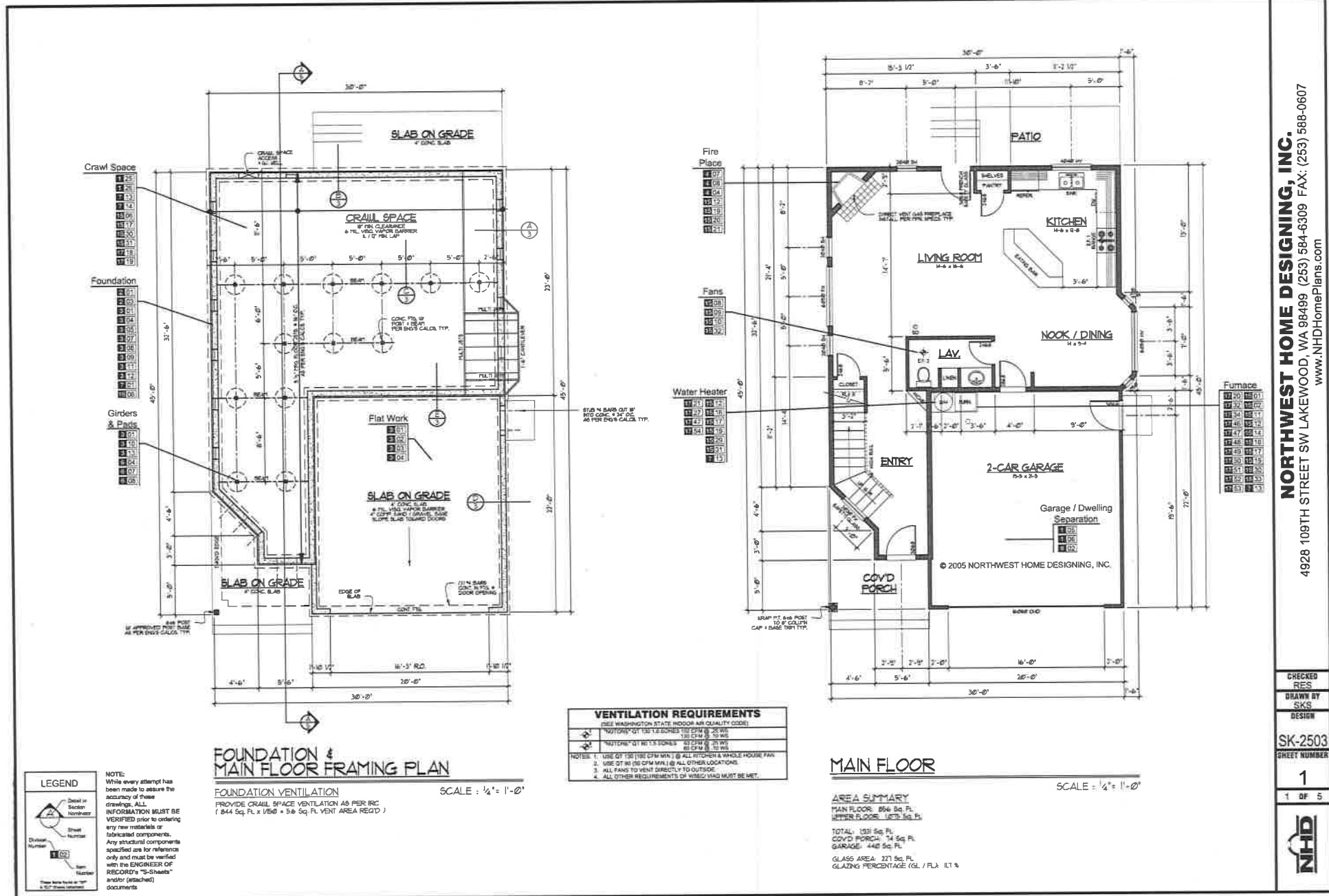
DRAWN BY
SKS
DESIGN

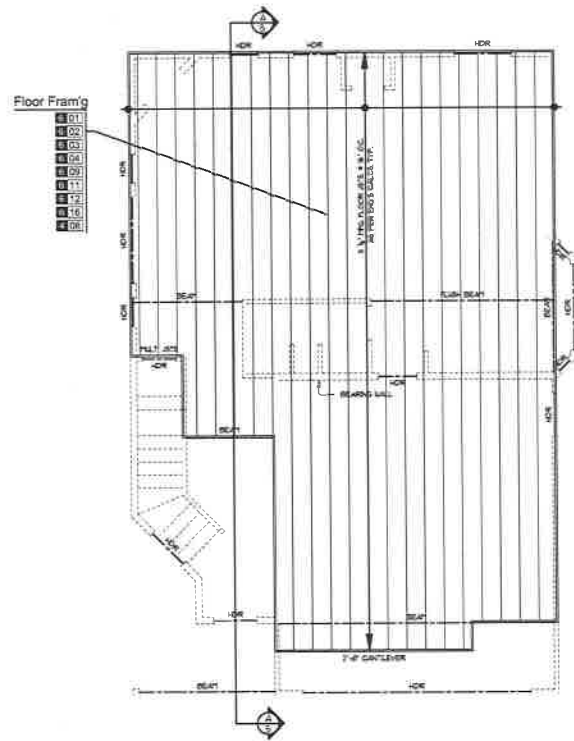
SK-2503
SHEET NUMBER

STUDY SET

OF



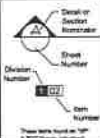




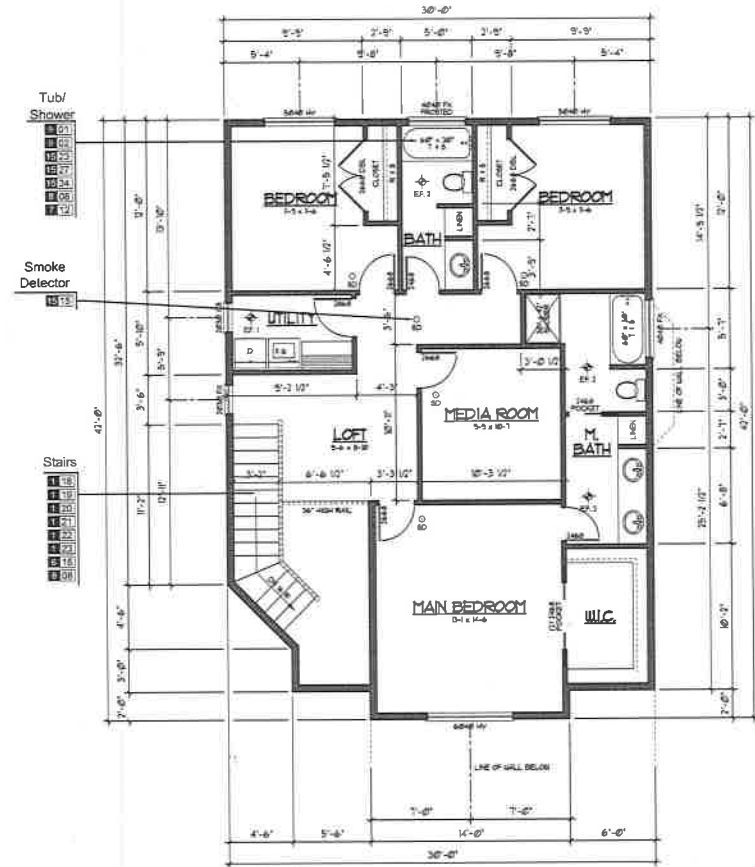
UPPER FLOOR FRAMING PLAN

SCALE : 1/4" = 1'-0"

LEGEND



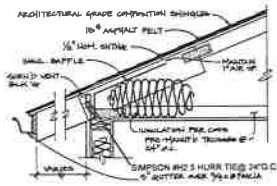
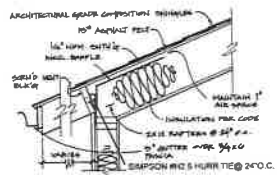
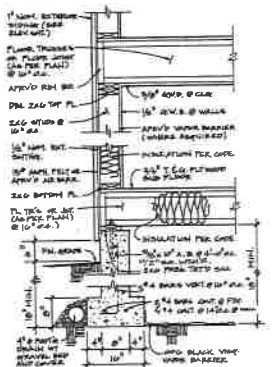
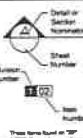
NOTE: While every attempt has been made to assure the accuracy of these drawings, ALL INFORMATION MUST BE VERIFIED prior to ordering any new materials or fabricated components. Any structural components specified are for reference only and must be verified with the ENGINEER OF RECORD's "S-Schedule" and/or (attached) documents.



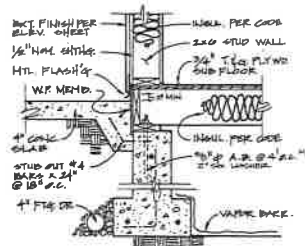
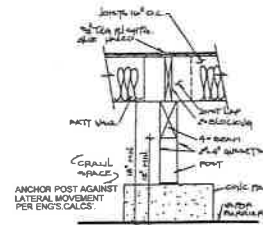
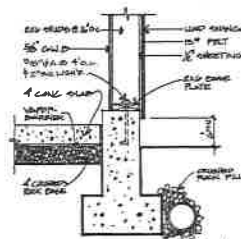
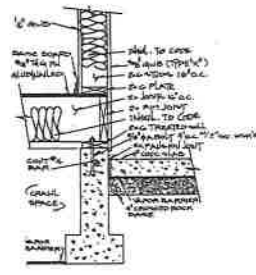
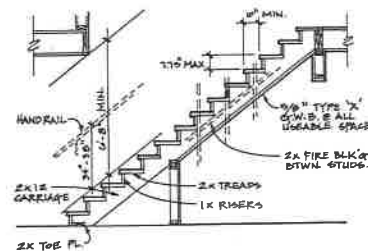
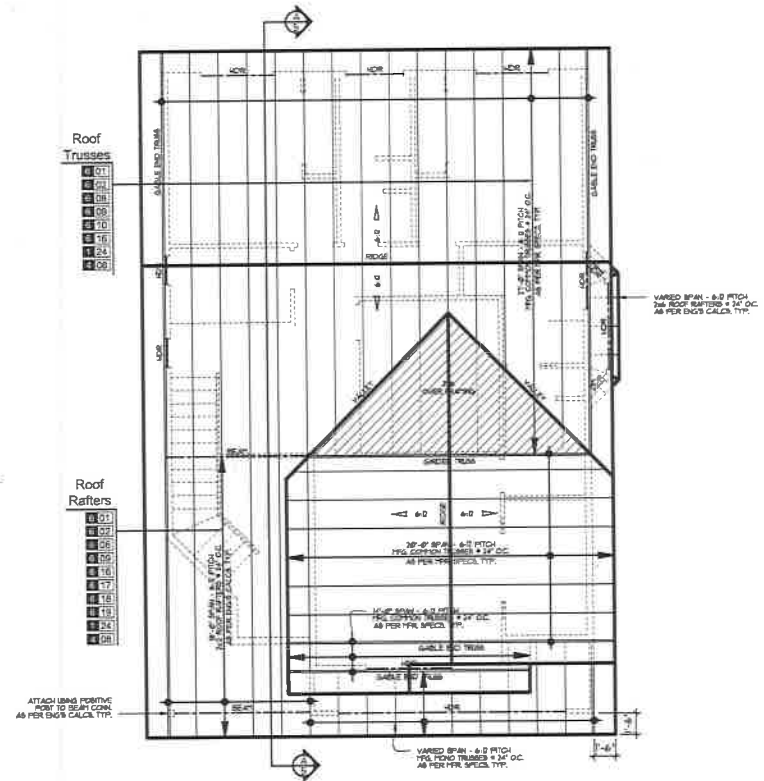
UPPER FLOOR

© 2005 NORTHWEST HOME DESIGNING, INC.

SCALE : 1/4" = 1'-0"

**WHEN TRUSSED****WHEN STICK FRAMED****TYP. TWO STORY CONFIG.**
Scale: 3/4\"=1'-0\" (A)**LEGEND**

NOTE: While every attempt has been made to assure the accuracy of these drawings, ALL INFORMATION MUST BE VERIFIED prior to ordering any new materials or fabricated components. Any structural components specified are for reference only and must be verified with the ENGINEER OF RECORD's "S-Drawings" and/or (attached) documents.

**PORCH SLAB DETAIL**
Scale: 3/4\"=1'-0\" (B)**GIRDER DETAIL**
Scale: 1\"=1'-0\" (C)**STEM WALL DETAIL**
Scale: 3/4\"=1'-0\" (D)**AREA SEP. DETAIL**
Scale: 3/4\"=1'-0\" (E)**STAIR CONSTRUCTION DETAIL**
Scale: 3/4\"=1'-0\" (F)**ROOF FRAMING PLAN**

© 2005 NORTHWEST HOME DESIGNING, INC.

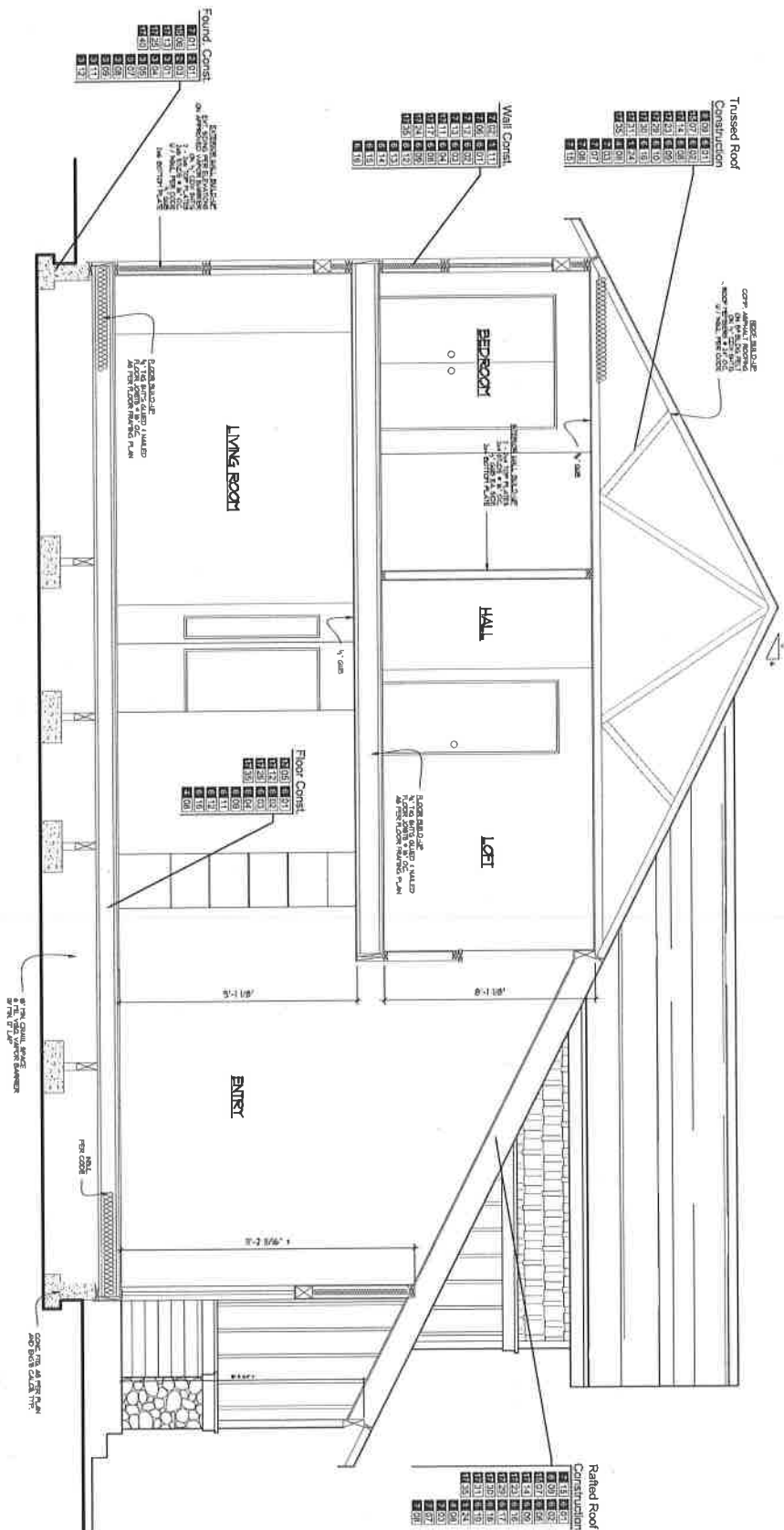
SCALE: 1/4\"=1'-0\"



SECTION A

© 2005 NORTHWEST HOME DESIGNING, INC.

SCALE: 1/2" = 1'-0"



SK-2503
SHEET NUMBER
5 OF 5

DESIGNER
DRAWN BY
RES
CHECKED

NORTHWEST HOME DESIGNING, INC.
4928 109TH STREET SW LAKEWOOD, WA 98499 (253) 584-6309 FAX: (253) 588-0607
www.NHDHomePlans.com

EXHIBIT B

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
VA 1-792-781

**Effective date of
registration:**
February 22, 2011

Title

Title of Work: NHD Plan SK-2503

Completion/Publication

Year of Completion: 2004

Date of 1st Publication: January 1, 2004

Nation of 1st Publication: United States

Author

■ Author: Northwest Home Designing, Inc.

Author Created: architectural work

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Northwest Home Designing, Inc.

4928 109th Street S.W., Lakewood, WA, 98499, United States

Limitation of copyright claim

Material excluded from this claim: Text, structural details and individual standard features

New material included in claim: architectural work

Rights and Permissions

Organization Name: COATS & BENNETT, PLLC

Name: Karen S. Boardman

Email: kboardman@coatsandbennett.com

Telephone: 919-854-1844

Address: 1400 Crescent Green

Suite 300

Cary, NC 27518

Certification

Name: Karen S. Boardman

Date: February 22, 2011

Applicant's Tracking Number: 6158-039



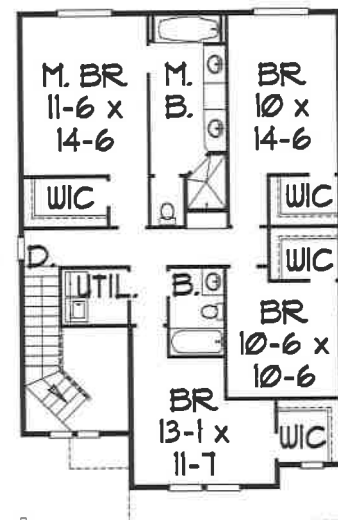
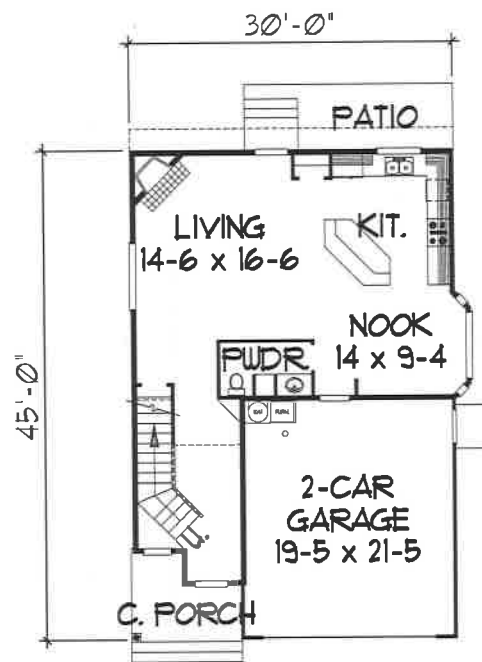
EXHIBIT C

© 2005 NORTHWEST HOME DESIGNING, INC.

TOTAL - 2004 Sq. Ft.
GARAGE - 432 Sq. Ft.



MAIN FLOOR
861 Sq. Ft.



UPPER FLOOR
1137 Sq. Ft.

NORTHWEST HOME DESIGNING, INC.

4928 109TH STREET SW LAKEWOOD, WA 98499 (253) 584-6309 FAX: (253) 588-0607
www.NHDHomePlans.com

CHECKED

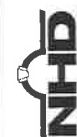
DRAWN BY
SKS

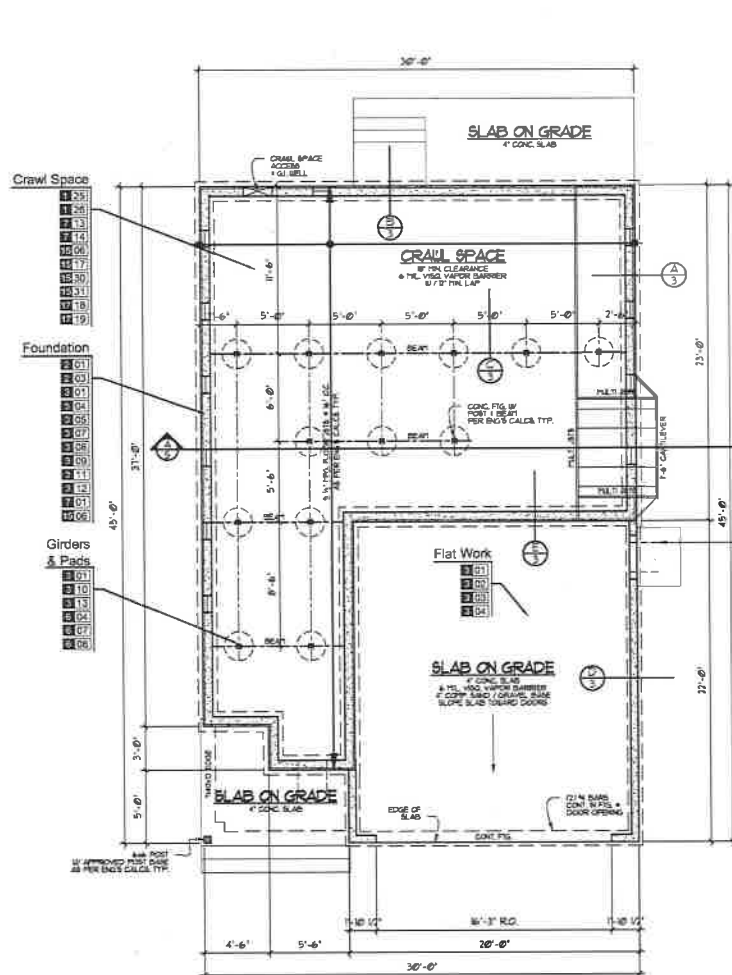
DESIGN
SK-2503
D

SHEET NUMBER

STUDY SET

OF





FOUNDATION & MAIN FLOOR FRAMING PLAN

FOUNDATION VENTILATION
 PROVIDE CRAWL SPACE VENTILATION AS PER IRC
 (80.4 Sq. Ft. x 100% = 5.1 Sq. Ft. VENT AREA REQ'D.)

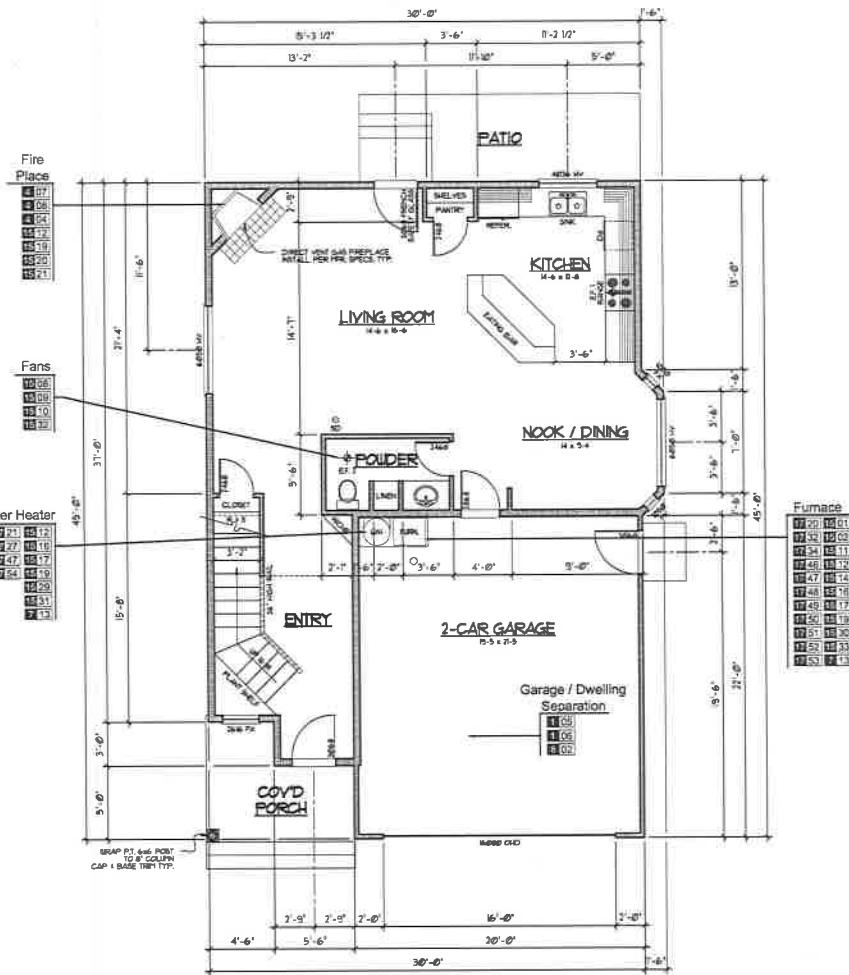
SCALE: 1/4" = 1'-0"

VENTILATION REQUIREMENTS

(SEE WASHINGTON STATE INDOOR AIR QUALITY CODE)

1	"NOTES" OF 130 FPM SORNER 100 CFM @ 25 WPS
2	100 CFM @ 10 WPS
3	"NOTES" OF 60 FPM SORNER 60 CFM @ 25 WPS
4	60 CFM @ 10 WPS

- NOTES: 1. USE OF 130 FPM (MIN.) @ ALL KITCHEN & WHOLE HOUSE FAN.
 2. USE OF 60 FPM (MIN.) @ ALL OTHER LOCATIONS.
 3. ALL FANS TO VENT DIRECTLY TO OUTSIDE.
 4. ALL OTHER REQUIREMENTS OF WAC-2404 MUST BE MET.



MAIN FLOOR

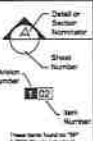
© 2005 NORTHWEST HOME DESIGNING, INC.

AREA SUMMARY
 MAIN FLOOR: 2617 Sq. Ft.
 UPPER FLOOR: 1172 Sq. Ft.

TOTAL: 3789 Sq. Ft.
 COVD PORCH: 44 Sq. Ft.
 GARAGE: 432 Sq. Ft.
 GLASS AREA: 2079 Sq. Ft.
 GLAZING PERCENTAGE (GL. / F.L.): 10.4 %

SCALE: 1/4" = 1'-0"

LEGEND



NOTE:
 While every attempt has been made to ensure the accuracy of these drawings, ALL INFORMATION MUST BE VERIFIED prior to ordering any new materials or fabricated components. Any structural components specified are for reference only and must be verified with the ENGINEER OF RECORD's "3-Steps" and/or (attached) documents.



LEGEND



NOTE:
While every attempt has been made to ensure the accuracy of these drawings, ALL INFORMATION MUST BE VERIFIED prior to ordering any raw materials or fabricated components. Any structural components specified are for reference only and must be verified with the ENGINEER OF RECORD's "3-Sheet" and/or (attached) documents.



© 2005 NORTHWEST HOME DESIGNING, INC.

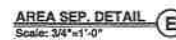
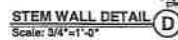
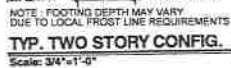
SCALE : $\frac{1}{4}" = 1'-0"$

CHECKED
RES
DRAWN BY
SKS
DESIGN
SK-2503
D
SHEET NUMBER

2

2 OF 5





SCALE : $\frac{1}{4}" = 1' - 0"$

NOTE:
While every attempt has been made to assure the accuracy of these drawings, ALL INFORMATION MUST BE VERIFIED prior to ordering any new materials or fabricated components. Any structural components specified are for reference only and must be verified with the ENGINEER OF RECORD's "8-3 sheets" and/or (attached) documents.

CHECKED RES
DRAWN BY SKS
DESIGN SK-2503 D
SHEET NUMBER 3
3 OF 5




RIGHT ELEVATION

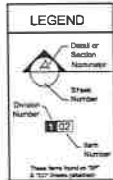
SCALE : 1/4" = 1'-0"



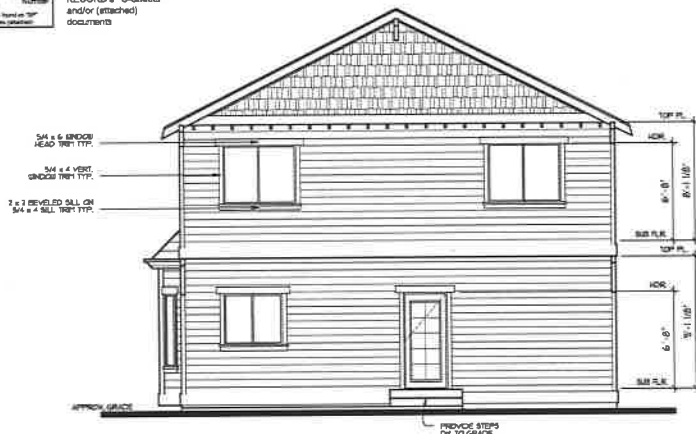
FRONT ELEVATION

© 2005 NORTHWEST HOME DESIGNING, INC.

SCALE : 1/4" = 1'-0"



NOTE: While every attempt has been made to assure the accuracy of these drawings, ALL INFORMATION MUST BE VERIFIED prior to ordering any new materials or fabricated components. Any structural components specified are for reference only and must be verified with the ENGINEER OF RECORD's "S-Sheets" and/or (attached) documents.



BACK ELEVATION

SCALE : 1/4" = 1'-0"



LEFT ELEVATION

SCALE : 1/4" = 1'-0"

NOTE: While every attempt has been made to assure the accuracy of these drawings, ALL INFORMATION MUST BE VERIFIED prior to ordering any new materials or fabricated components. Any structural components specified are for reference only and must be verified with the ENGINEER OF RECORD's "S-Sheets" and/or (attached) documents.

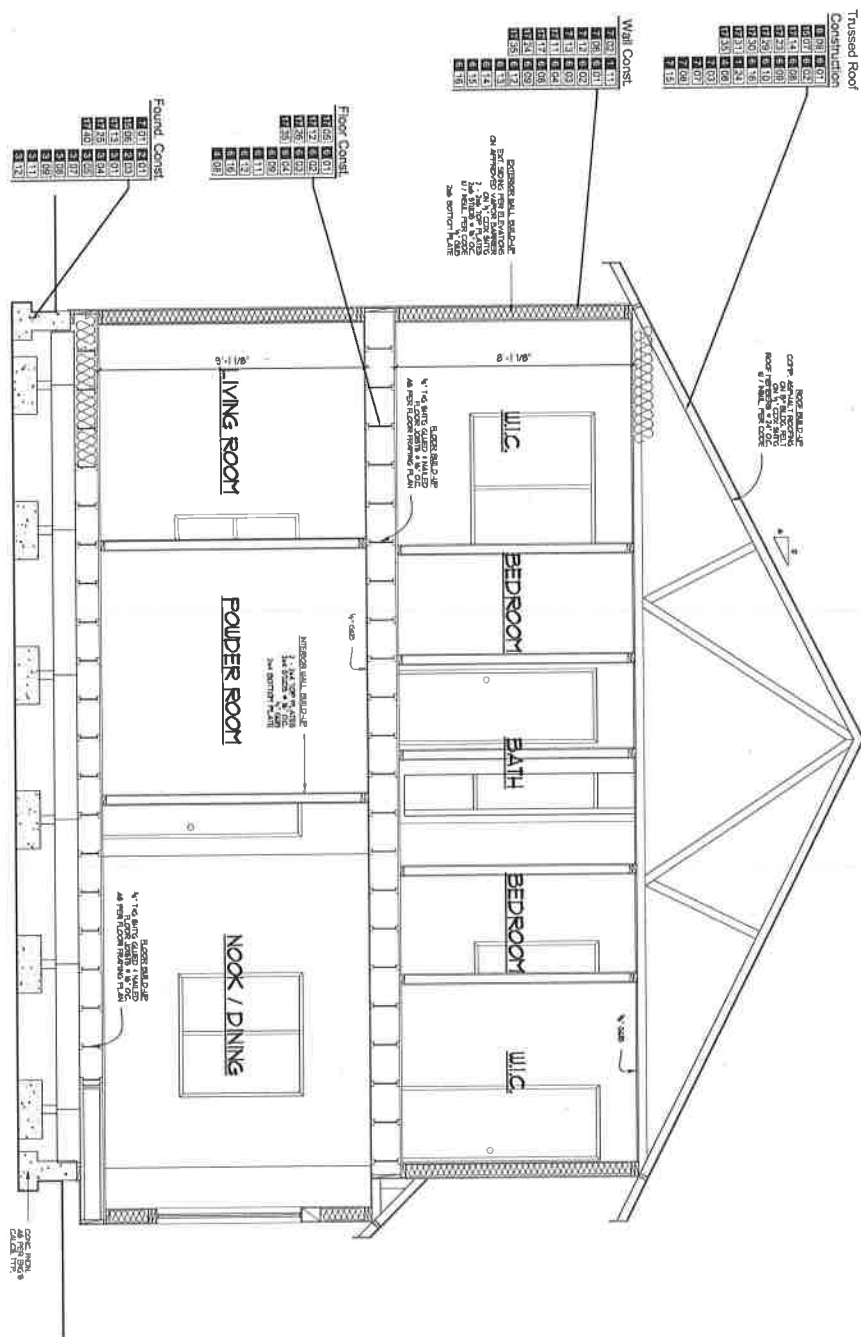
SCALE : $\frac{1}{4}'' = 1'-0''$ 

EXHIBIT D

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
VA 1-792-785

**Effective date of
registration:**

February 22, 2011

Title

Title of Work: NHD Plan SK-2503-D

Completion/Publication

Year of Completion: 2007

Date of 1st Publication: January 1, 2007

Nation of 1st Publication: United States

Author

■ **Author:** Northwest Home Designing, Inc.

Author Created: architectural work

Work made for hire: Yes

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Northwest Home Designing, Inc.

4928 109th Street S.W., Lakewood, WA, 98499, United States

Limitation of copyright claim

Material excluded from this claim: Text, structural details and individual standard features; Derivative of NHD Plan SK-2503

New material included in claim: architectural work

Rights and Permissions

Organization Name: COATS & BENNETT, PLLC

Name: Karen S. Boardman

Email: kboardman@coatsandbennett.com

Telephone: 919-854-1844

Address: 1400 Crescent Green

Suite 300

Cary, NC 27518

Certification

Name: Karen S. Boardman

Date: February 22, 2011

Applicant's Tracking Number: 6158-040



0000VA00017927850201

EXHIBIT E

LEXAR™
—HOMES—



LEXAR™ 2272
Standard Orientation

Rendering shown with optional features:

Cultured Stone, Window Grids, Craftsman Trim, Bat and Board, Arched Garage Doors, Gable Shakes

3 Bedroom | 2.5 Bath
Spacious Master Suite
Second Floor Loft - Great Space For The Kids
Open Concept Main Floor Makes It Easy To Entertain
Great Curb Appeal
5/12 Roof Pitch Standard

**CHOOSE RIGHT
LIVE RIGHT**

LexarHomes.com

This design is copyrighted and licensed to Lexar Homes by the designer. All rights reserved. Plan is shown with some Optional Items. Artist's conceptual drawing. Builder reserves the right to change plans, specifications and prices without notice. Plan number is approximate square feet. ©2015 Lexar Homes. LEXAR-1190007

LEXARTM HOMES



LEXARTM 2272 Reverse Orientation

Rendering shown with optional features:

Cultured Stone, Window Grids, Craftsman Trim, Bat and Board, Arched Garage Doors, Gable Shakes

3 Bedroom | 2.5 Bath
 Spacious Master Suite
 Second Floor Loft - Great Space For The Kids
 Open Concept Main Floor Makes It Easy To Entertain
 Great Curb Appeal
 5/12 Roof Pitch Standard

**CHOOSE RIGHT
LIVERIGHT**

LexarHomes.com

This design is copyrighted and licensed to Lexar Homes by the designer. All rights reserved. Plan is shown with some optional items. Artist conceptual drawings. Builder reserves the right to change plans, specifications and prices without notice. Plan number is approximate square feet. ©2015 Lexar Homes. LEXAR-H2000007